

U.S. FISH AND WILDLIFE SERVICE
CONTINGENCY PLAN FOR OPERATIONS IN THE EVENT OF A LAPSE IN
APPROPRIATIONS
September 2015

Background

The U.S. Fish and Wildlife Service (Service) is the oldest Federal conservation agency, tracing its lineage back to 1871. Over its 142 year history, the Service has adapted to the Nation's changing needs to become a leader in protecting and enhancing America's biological natural resources. In the face of escalating challenges such as land-use, population growth, invasive species, water scarcity, and a range of other complex issues, amidst a changing climate, the Service is meeting today's pressing conservation challenges with a strategic approach.

The Service is the only agency in the Federal government whose primary responsibility is management of biological resources for the American public. The Service helps ensure a healthy environment for people by providing opportunities for Americans to enjoy the outdoors and our shared natural heritage.

The Service is responsible for implementing and enforcing some of our Nation's most important environmental laws, such as the Endangered Species Act, Migratory Bird Treaty Act, Marine Mammal Protection Act, The Lacey Act, and international agreements like the Convention on International Trade in Endangered Species.

The Deputy Director for Operations, Jim Kurth has responsibility for oversight of the execution of the plan. The Budget Officer, Chris Nolin and Human Resources Officer, Rebekah Giddings, will serve as Agency Points of Contact for planning and implementation.

Shutdown Process

FWS estimates that it will take a half day to shut down most operations. FWS expects that an additional 100 employees will need 8 hours for the shutdown process, in some cases more, to assure property is secured and that everyone knows what the instructions are about who stays on duty and who does not.

Exempt and Excepted Employees

Unless "authorized by law," the Anti-Deficiency Act prohibits the federal government from obligating funds before an appropriations measure has been enacted and also from accepting "voluntary services." See 31 U.S.C. §§ 1341 and 1342. The Act provides an exception for "emergencies involving the safety of human life or the protection of property." However, "emergencies involving the safety of human life and the protection of property" do not "include the ongoing, regular functions of government, the suspension of which would not imminently threaten the safety of human life or the protection of property." See 31 U.S.C. § 1342.

Also, a shutdown generally does not apply to activities funded by obligations validly incurred in

an earlier fiscal year or by multi-year or permanent appropriations. Accordingly, contracts that were previously funded by prior enacted appropriations may continue.

The Service has designated excepted and exempt personnel in six categories. Excepted personnel are those who perform essential activities for the protection of life and property and for law enforcement. Included in this area are animal caretakers, who must feed and care for live animals and those who must protect lab materials that may spoil; refuge management personnel who are essential to protect federal property and public safety; essential infrastructure personnel, who are essential to providing support services, such as information technology and building security to other essential employees; and law enforcement officers, including refuge law enforcement and criminal investigators.

Exempt personnel are those employees who perform activities that are funded by non-lapsing appropriations. These employees include those funded by the Service's permanent funds, including Sportfish and Wildlife Restoration funds, and including funding for reimbursable agreements from non-federal agencies and from other federal agencies with non-lapsing appropriations, such as the Federal Highway Trust Fund. A list of exempt programs can be found below.

Approximate Number of Employees Required

Law Enforcement	490
Permanent Funding	965
Essential Infrastructure	165
Animal Caretaker	140
Refuge	310
Emergency Personnel	100
Total	2,170

ANIMAL CARETAKERS

Fisheries and Habitat Conservation

Each hatchery will have at least one person on site, with up to two persons on call to protect the physical facility and maintain the fish at the hatchery. During a short-term shut down, fish on site would be maintained, further determinations will need to be made as time passes in the event of a longer-term shut down. Fish Health Centers and Fish Tech Centers will also have at least one and not more than three persons to maintain live animals and cell cultures. The Aquatic Animal Drug Approval Program in Bozeman, MT also will have at least one and not more than three persons to maintain live animals and cell cultures.

Endangered Species

Each captive breeding facility will have at least one person on site and not more than three persons on call to protect the physical facility and maintain the live animals at the facility. Certain other staff will be retained to work on activities that are required based on court-ordered deadlines.

REFUGE MANAGEMENT

National Wildlife Refuge System

FWS has 563 refuges and 38 wetland management districts, so in all almost 600 units. In the absence of appropriations, FWS must close refuge areas unless and until it is able to determine that allowing particular areas to be reopened or even limited activities to resume will not cause it to expend or obligate funds in violation of the Anti-deficiency Act. Consistent with the terms of its concessions contracts, visitor services offered by concessioners are closed when the refuge is closed to visitors as a result of a lapse in appropriations. An FWS Closure Determination and Notice will be issued that provides for details on the closures, any exceptions to the closure that are provided, and the process FWS will use to consider whether particular activities could be lawfully allowed to resume.

FWS has determined that Waterfowl Production Areas may lawfully remain open during the appropriations shutdown. Pursuant to the specific authorities for subsistence uses under the Alaska National Interest Lands Conservation Act (ANILCA), FWS has determined that Alaskan subsistence access and activities will be allowed to continue during the shutdown period.

FWS will not retain staff at every refuge, but will have a Refuge Manager and/or Federal Wildlife Officer(s) at every station with on-site staff, including major refuge complexes. Excepted staff will protect life and safeguard government property and records. They are needed for life and asset protection. For example, there are areas where the refuge is bisecting a highway and accidents on the highway require access through the Refuge by law enforcement and emergency response personnel. Refuge visitor centers and other public facilities will be closed to public access, however, refuge staff is needed to patrol government property and ensure the protection of vehicles, heavy equipment, and other assets. Additional personnel would be on call to respond in the case of a large-scale incident, for emergency response and/or to protect property.

LAW ENFORCEMENT

Refuge Law Enforcement Staff

In the event of a shutdown, all Federal Wildlife Officers of the National Wildlife Refuge System will be essential for basic protection of human life and the security of Service property and facilities. These personnel have primary responsibility for providing basic protection for Service managed facilities and lands. They will also serve as critical emergency first responders.

Law Enforcement

Law enforcement criminal investigators , conservation officers, and wildlife inspectors will continue to function, as necessary for protection of human life and to safeguard government property. Wildlife inspectors are paid with fees and not lapsing appropriations. Only those administrative personnel needed to maintain these essential functions will remain on duty.

EMERGENCY PERSONNEL

Fire Management Staff

Fire management staff designated excepted for purposes of protecting life and property, and to provide emergency services. Fire staff must suppress wildfires on or near Service owned land because those fires can harm life and/or property belonging to the Service and to private landowners. The need for fire management staff varies across the nation according to weather and season. The following positions will be excepted for basic protection of life and property; however, these positions are not able to conduct regular fire management activities such as prescribed burning. Therefore, fire management activities will be limited to preparedness and wildfire suppression on Service lands.

Units within their fire season will retain excepted fire staff sufficient for minimal Initial Attack capability on site (per staffing plans and preparedness levels). Excepted staff must be approved by the Project Leader and Regional Fire Management Coordinator (RFMC), and each unit must establish procedures for calling in additional capability as needed for larger scale fire suppression activities. Units will not implement any prescribed fires until after furlough ends.

- Regions and Units will retain excepted staff in established interagency Dispatch and/or Coordination Centers if these areas are experiencing wildfires.
- Regions will retain the RFMC, or acting, as excepted staff to coordinate suppression activities, and they will establish procedures for calling in additional capability as needed for fire suppression.
- The Service will retain the Chief of the Fire Management Branch, or acting, as excepted staff to coordinate suppression activities, and they will establish procedures for calling in additional capability as needed.

NRDA/Spill Response/Other Emergency Staff

Other staff may be necessary to continue operations at any emergencies existing at the time of appropriations lapse, or emergencies that occur after the lapse of appropriations.

ESSENTIAL INFRASTRUCTURE

National Conservation Training Center (NCTC)

NCTC will shut down operations, send students home, send the NCTC staff home, send contractors home and cancel all scheduled classes. As part of shutdown, NCTC will notify all students who are to arrive within two to four weeks after furlough is implemented. NCTC will

need a small number of staff for maintenance of operations for the security and safety of the facility.

Human Resources

A small number of Human Resource specialists will be available to oversee the HR issues including payroll for permanently funded employees, and employee emergency and support services.

Division of Budget

The Division of Budget will need two key personnel to interact and communicate with the Department, the Office of Management and Budget, Treasury, and Congress, and to participate in the closeout of the prior year financial accounts. Policy and special analytical computations may be required to inform the Department, OMB and others about exempt activities in the absence of appropriations and to monitor the status of appropriations and keep the organization informed of status. Fund transfers and fund management of permanent funds and funding for excepted employees will be necessary.

Business Management Operations

The Assistant Director - BMO is excepted to coordinate the activities of the Divisions of Financial Management and Contracting and Facilities Management to direct the orderly shutdown of operations. The Division of Financial Management will have a small number of employees on call to answer questions regarding emergency payments and financial operations. These staff will also be available to oversee emergency transactions that are needed related to excepted activities.

If payment interest accumulates under the Prompt Payment Act, funds will need to be redirected to that purpose when operations recommence.

To provide liaison between the Division of Engineering, contractors and the Division of Financial Management on actions related to ongoing projects, a few contracting officers and the contracting chief in each Region and headquarters, will remain on duty. The contracting officers will be responsible for support of excepted contracting actions and closing down hundreds of service contracts and negotiating demobilization costs. Work on contracts that are not funded by a lapsing appropriation, such as projects that are fully funded, may continue, provided government additional oversight requiring additional excepted personnel is not necessary to facilitate performance during the shutdown.

Contracting activity shutdown personnel must issue Stop Work or Suspension of Work orders, or Terminate for the Convenience of the Government, for all non-essential contracts that would have been funded by the 2014 continuing resolution, in accordance with FAR procedures. Once this work is completed, if the employees do not have responsibility for other excepted work, they will be furloughed. This is expected to take a week or more.

Contracting and General Services mail room operations will be suspended, but commercial carriers will continue to deliver packages. For Regional Offices that lease an entire building, one facilities manager will need to remain on duty. Because there will be no payroll processed during the furlough, only one employee in the Denver Finance Office will be on call for emergency situations related to QuickTime and/or payroll.

Assistant Director - Information Resources and Technology

To maintain required telecommunications (voice systems, email and networking) capabilities and internet access, maintain network servers as operational, and provide technical support to other staffed offices, a small number of employees will remain on duty in Arlington, Virginia. Additionally, the Service's Information Technology (IT) Security Manager will remain on call to respond to problems related to IT security. Ongoing efforts to upgrade IT security should continue during a shutdown, and employees essential to this effort should be exempt.

To maintain required telecommunications capabilities (voice systems, email and networking) nationally, maintain internet access and national network servers and to provide support to the Regional and Field offices which remain staffed, two employees will remain on duty in the Information Resources Management/National Communications Center (Denver, Colorado).

External Affairs

The Assistant Director for External Affairs is excepted to respond to Congressional inquiries and ensure communications within the Service. The Assistant Director may designate a limited number of employees to carry out these responsibilities.

Service Leadership

The following members of the Directorate are deemed excepted to oversee essential activities in the Service; communicate with employees, the Department, the Office of Management and Budget and the Congress; ensure the life safety and protection of facilities throughout the Service.

- Director
- Associate Director
- Deputy Director - Policy
- Deputy Director - Operations
- Chief of Staff
- Special Assistant

The Director may designate up to three additional employees on call to assist in carrying out executive responsibilities related to the shutdown of operations.

Regional Directors or their designees must be excepted to provide essential protection of life safety and facility protection and to respond to any emergencies at field stations, issues with the public on federal lands, and coordinate with the Washington Office. Regional Directors may

designate up to three additional employees on call to assist in carrying out work related to the Regional Office. Regional Assistant Directors for Budget and Administration, and the Regional Human Resource Officer will be exempted to provide oversight for funding needed for permanently funded activities. Regional Directors are authorized to call in as many people as are reasonably needed to respond to emergency situations such as fires and floods.

Exemptions

Employees whose salaries are paid from permanent appropriations (receipts) and unobligated balances brought forward in no-year and multi-year accounts will continue to carry out their normal functions. A listing of these accounts is listed below.

Personnel Exempt from Shutdown

FWS has 965 employees who fit into the category “employees whose compensation is financed by other than annual appropriations.”

Permanent accounts (not subject to Congressional appropriation each year)

In these accounts, carryover balances and new receipts would be available.

- Federal Aid in Wildlife Restoration (all subactivities)
- Sport Fish Restoration (all subactivities)
- North American Wetlands Conservation Fund (all subactivities from 5820-5864)
- Natural Resource Damage Assessment Fund - Receipts/Interest (transfer from Office of the Secretary; all subactivities from 9810-9831)
- Resource Management (no-year account: all receipts)
- National Wildlife Refuge Fund
 - Expenses for Sales
 - Payments to Counties (permanent only, with receipts)
 - Alaska National Interest Lands Conservation Act
- Migratory Bird Conservation Account
- Proceeds from Sales
- Contributed Funds
- Multinational Species Conservation Fund (donation only)
- Operations and Maintenance of Quarters
- Recreational Fee Demonstration Program
- Lahontan Valley and Pyramid Lake Fish and Wildlife Fund
- Wildlife Inspection paid from offsetting collections.

Reimbursable authority

- Resource Management (subactivities from 1900-1999)
- Construction and Anadromous Fish
 - 2690 Drought
- Natural Resource Damage Assessment
 - 8912 Damage Assessment
- Land Acquisition (subactivities from 8470-8479)

- PRFPs – Oil Spills
- Federal Highway Trust Fund

Reimbursable work may continue only if the ordering agency has funds available during the shutdown, and the work is funded exclusively by the ordering agency not funded by annual appropriations.

No-Year Funding

Construction - The Division of Engineering is funded with no-year funds and will continue to operate as long as balances are available to oversee contracts and respond to the needs of ongoing operations.

Land Acquisition - Activities will continue on funded projects as dollars are available. Some contraction of effort is expected, as many personnel are jointly funded with yearly and no-year appropriations.